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ADMINISTRATIVE LAW BULLETIN

JAN. 1 1952-53

Vol. 4-5 No. 1

ADMINISTRATIVE LAW SECTION of AMERICAN BAR ASSOCIATION

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THE NEW YORK MEETING

The Annual Meeting of the Administrative Law Section was held in New York City on September 18, the Council having met on September 17 to transact its business. The Section meeting which convened at the Roosevelt Hotel was concerned largely with the consideration of matters raised by the reports of the various committees, all of which were printed in full or summarized in the Administrative Law Bulletin issued prior to the meeting (Vol. 3 No. 3). In addition to these matters, which will be discussed in more detail below, members of the Section heard an address on French Administrative Law given by Professor Bernard Schwartz at the annual luncheon. Professor Schwartz had recently returned from France where he spent several months studying the matters about which he spoke. In the afternoon of September 17, a joint session of the Administrative Law Section and Section of Corporation, Banking and Business Law was held at the Waldorf Astoria. This meeting was addressed by Manly Fleischmann Administrator, Defense Production Administration and by Charles H. Kendall, the General Counsel of the Administration.

Officers for the coming year are as follows:

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Vice-Chairman: John W. Cragun, 744 Jackson Place, Washington 6, D. C.

Secretary: Patricia H. Collins, Assistant Solicitor General's Office, Department of Justice, Washington 25, D. C.

The last retiring Chairman: Reuben Hall, 30 Federal Street, Boston 10, Massachusetts

Section Delegate to House of Delegates: Carl McFarland, Montana State University, Missoula, Montana.

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George Rossman, Supreme Court Building, Salem, Oregon.

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John B. Gage, 1007 Bryant Building, Kansas City 6, Missouri

SUMMARY OF PROCEEDINGS

The meeting of the Section opened with a brief report by the chairman, Reuben Hall, Esquire, of Boston. Mr. Hall pointed out that the reports of the various committees had been published prior to the meeting and that the members were thus generally familiar with the activities of the Section. He called particular attention to the report of the Committee on the Administrative Court Proposal (See Bulletin, Vol. 3, No. 3, p. 78), the proposals dealing with improvements of administrative procedure, matters involving practitioners before federal administrative agencies and the activities of the special committee on contracts with the Indian tribes.

Mr. John Cragun then reported for the National Committee (See Bulletin, Vol. 3, No. 3, p. 67). Mr. Donald Heggy reported for the Committee on Administrative Rules and Rule-Making. The report as originally published (Bulletin, Vol. 3, No. 3, p. 101) was concerned with abuses in rule-making under the Administrative Procedure Act.

THE JUDICIAL CONFERENCE RECOMMENDATION AND S. 17

As a supplemental report, Mr. Heggy referred to a report by a sub-committee on S. 17, a bill for the establishment of a commission to prescribe uniform rules for administrative agencies, and asked Mr. Ralph Fuchs, the chairman of the sub-committee to present it to the Section. Mr. Fuchs stated the sub-committee's opinion that S. 17 was open to criticism in certain respects and that the matter required further study. He pointed out that the Council had adopted a resolution regarding the matter as follows:

"Resolved, that the Section of Administrative Law approves in principle the desirability of securing some uniformity in rules of administrative procedure and suggests that any Commission created for that purpose, such as the Commission proposed in S. 17, be so constituted as to make adequate provision for complete representation thereon of administrative agencies and the legal profession."

This resolution was adopted by the Section.

At the invitation of the Chairman, Mr. Heggy also discussed a proposed report of the Advisory Committee of the Judicial Conference dealing with improvements of records in administrative proceedings. The significant feature of the report was a recommendation that the President of the United States call a conference of agency representatives to consider problems of unnecessary delay, expense and volume of record in administrative proceedings. The Chairman of the Judicial Conference Committee had invited the Section to express its views regarding the subject of its report. Mr. Heggy then offered the following resolution, which was adopted by the Section.

"Resolved, that the Section of Administrative Law welcomes the cooperation and interest of the Judicial Conference in the long-standing program of the American Bar Association to improve the administrative process and the judicial review of administrative proceedings. (2) That the officers of the Section are directed to communicate with the Committee of the Judicial Conference and

to make such suggestions and recommendations with respect to the report of the Advisory Committee on Administrative Procedure as is appropriate and feasible under the circumstances and will result in reducing the unnecessary delay, expense and volume of records in administrative proceedings, promote the efficiency of administrative agencies, and enhance the value of the administrative process in the public interest."

[Pursuant to this resolution the Chairman of the section later advised the Judicial Conference Committee that the Section regarded the calling of a conference as being highly desirable but that the legal profession at large should, in its opinion, be represented at the conference as well as representatives of the various agencies. He also suggested that the conference receive suggestions and recommendations from the appropriate officers of the Section. Officers of the Section were subsequently advised that the Judicial Conference had adopted the committee report and had added a recommendation that appropriate representation be given the legal profession at large in any conference which might be called.]

THE ADMINISTRATIVE COURT PROPOSAL

Following consideration of the above matters, the Chairman called on Mr. Robert Benjamin for a report from the Committee on the Administrative Court Proposal. (See Bulletin, Vol. 3, No. 3, p. 78). Mr. Benjamin supplemented the written report with a brief statement clarifying certain portions of the report. There was no further discussion regarding the matter.

THE ADMINISTRATIVE PRACTITIONERS BILL

Extended discussion was evoked by the report of the Committee on Administrative Practitioners and Administrative Ethics (See Bulletin, Vol. 3, No. 3, p. 93) as supplemented by the chairman, Mr. F. Trowbridge Vom Baur. The report dealt largely with H. R. 3097, the Administrative Practitioners Bill. Mr. Vom Baur stated that his committee had redrafted this bill in a form which in general followed the lines of H. R. 3097 but which was designed to improve the latter measure by making practice by lawyers easier and more efficient and by preventing laymen from engaging in certain types of practice before administrative agencies which are considered to be the practice of law. Mr. Vom Baur also stated that a meeting had been held with members of the Standing Committee on Unauthorized Practice of Law and that substantial agreement regarding the new draft had been secured from the members of the Unauthorized Practice Committee who were present.

At the invitation of the chairman, Mr. Carl McFarland reviewed the history of the administrative practitioners bills, stressing the point that the bills as finally proposed were the result of long negotiations and compromises with various interested groups. For this reason, he opposed the approval of a completely new draft. Mr. McFarland pointed out, however, that at the meeting of the Council held on September 17, there was considerable sentiment favoring the inclusion in the bill of a provision restricting the appearance of non-lawyers in formal administrative proceedings, the provision to become effective five years after the enact-

ment of the measure. Mr. McFarland then suggested that although a preference for the inclusion of the provision as stated should be indicated, the Section and the Committee should be left free to revert to any of the previous positions which had from time to time been taken. After further discussion, Mr. McFarland moved "That we proceed with the Practitioners Act as heretofore drafted, but that we authorize our committee to attempt to get, with all the vigor it can, by the addition of appropriate words to the first sentence of Section 5, a modification to the effect that after five years from the adoption of the Act, laymen will not be admitted . . . to practice in formal proceedings; but that this instruction be given to the Committee with the further instruction that they may if necessary adopt any of the previous provisions that have been in this Act on that one point." This motion was duly seconded and carried.

Later in the day, there was further discussion of the Practitioners Act. Mr. Vom Baur suggested that the pending bill be changed by (1) removing the exception for the Tax Court, (2) including a provision for recognition by the agencies of an attorney at law who files a notice of appearance and (3) changing the fiscal and administrative provisions so as to place the budgetary and administrative control within the Department of Justice under the Attorney General. These suggestions were discussed but no action was taken on them. In response to an inquiry the Chairman stated that in this as in other matters the Council has broad general authority within the policy adopted by the Section to make modifications of proposals to the extent necessary.

S. 1770

Prior to completing consideration of the Administrative Practitioners Bill, the Section interrupted the order of business to permit Mr. Harold Leventhal, General Counsel of the Office of Price Stabilization, to make a statement regarding S. 1770, a bill to remove exemptions from the provisions of the Administrative Procedure Act of certain agencies, including some of the "emergency" agencies. Mr. Leventhal's position was that the activities of the Office of Price Stabilization should not be subject to the Administrative Procedure Act. He stressed the view that the Office was a temporary one, that the complexity of setting up a formal rule making procedure would be very great, that prompt action was often necessary to avert hardship and that compliance with all of the formalities of the Act would be unduly burdensome.

After the luncheon recess, Mr. Charles Rhyne presented a statement from Senator McCarran dealing with S. 1770. The senator referred to the growing tendency on the part of the Congress to insert exemptions from the requirements of the Administrative procedure act into emergency legislation and suggested that there had been a lack of studied consideration in each case of the exempting provision. He also stated that at the time of the introduction of S. 1770, the various agencies were invited to submit their views concerning it. For the most part, the agencies simply repeated the "hardship" argument but the Department of Commerce pointed out that the frequent necessity for invoking certain exceptions in the Act might be misconstrued by the public. As a result of this statement, the bill was amended to provide that no implication

should be drawn from the repeal in regard to any exemption heretofore granted by the Administrative Procedure Act. Senator McCarran also referred to the flexibility of the Administrative Procedure Act as an indication that the agencies are not unduly hampered by it, and reiterated his concern that the entire objective of the Act was being endangered by the practice of granting exemptions. He concluded by urging that the support of the Section be given the bill.

Just prior to the reading of Senator McCarran's statement, the Secretary of the Section had read a resolution which had been adopted by the Council at its meeting on September 17, as follows: "Resolved, that the Administrative Law Section approves in principle as partially contained in S. 1770 the theory against exempting government agencies or functions from the operations of the Administrative Procedure Act." Following the reading, there was a general discussion of the problem, in the course of which it was pointed out that the Section's Committee on Emergency Agencies had recommended against the approval of S. 1770 insofar as it concerned the agencies with which that committee is concerned. On the other hand, the committee on the Administrative Procedure Act expressed general approval of the measure, subject to a further study of the specific exemptions which were to be repealed. The chairmen of the two committees each indicated satisfaction with the resolution as proposed. The adoption of the resolution was moved and seconded. Mr. Fuchs proposed that the resolution be amended by inserting at the beginning of it the words: "Without prejudice to the possible continuance of limited exceptions for which unusual justification may be shown." The amendment was defeated and the resolution as originally proposed was adopted. During the debate on the resolution the chairman stated that the resolution simply expressed approval "in principle [of] the general philosophy of this Section, and we are against exemptions from the Administrative Procedure Act to any agency or function and reserve whatever rights we think we ought to have with respect to a particular agency or function and how this repeal would affect its proper operation."

DEPORTATION PROCEEDINGS

The final matter as to which there was extensive discussion, involved the question as to whether deportation proceedings regarding aliens should be subject to the provisions of the Administrative Procedure Act. Mr. Cragun, reporting in the absence of Mr. Wasserman, the chairman of the Section committee having jurisdiction of the matter, proposed the following resolution:

"Resolved, that the Section of Administrative Law reaffirms the resolution adopted at the 1950 meeting disapproving the exemption from the Administrative Procedure Act accorded to deportation proceedings before the Immigration and Naturalization Service and directing its officers and council to take all appropriate action which may be feasible to bring about the repeal of the objectionable provision of the Supplemental Appropriation Act of 1951 and reaffirms its view that deportation proceedings should be held before a hearing exam-

iner in accordance with Sections 5, 7 and 8 of the Administrative Procedure Act."

Mr. Benjamin G. Habberton, Deputy Commissioner of Immigration and Naturalization was then recognized by the Chairman and made a statement which stressed the difficulties involved in conducting deportation proceedings in compliance with the Administrative Procedure Act. He suggested that the Section was insufficiently informed regarding the problems involved and that a decision should be made only after mature consideration of all aspects of the problem. After further discussion, Mr. Whitney Harris moved that the matter be referred to the Council with authorization to state the position of the Section after further consideration. The motion was carried.

HEARING EXAMINERS

The Chairman then called the attention of the group to the matter of the selection of examiners under Section 11 of the Administrative Procedure Act and stated that there had been an agreement with the Chairman of the Association Committee on Civil Service and the Association Committee on Correlation and Scope of Activities that there would be joint action between the Section Committee on Examiners and the Committee on Civil Service with respect to the matter at hand.

The Section meeting then adjourned to meet with the Section of Corporation, Banking and Business Law to hear the program previously mentioned.

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Mutual Building
Richmond 19

F. M. Rivinus
Nor. & West. Ry. Co., Law Dept.
Roanoke

Stuart T. Saunders
Law Dept.
Norfolk & Western Ry. Co.
Roanoke 16

Carol M. Crosswell
Ballyclore
Vienna

WASHINGTON

Clarence J. Coleman
415 First Nat'l Bank Bldg.
Everett

H. C. Brodie
205 Capitol Park Bldg.
Olympia

Will M. Derig
819 Northern Life Bldg.
Olympia 1

Harry L. Parr
Temple of Justice
Olympia

Miss Lucile Lomen
1217 George Washington Way
Richland

W. Harold Hutchinson
1411 Fourth Ave. Bldg.
Seattle 1

Charles F. Riddell
Smith Tower, 28th fl.
Seattle 4

Alfred John Schweppe
657 Colman Building
Seattle 4

Richard Kent Stacer
203 White Building
Seattle 1

Albert E. Stephan
711 Central Building
Seattle 4

John W. Sweet
503 Joseph Vance Bldg.
Seattle 1

Samuel J. Wettrick
805 Arctic Building
Seattle 4

Martin L. Wolf
1303 Vance Building
Seattle 1

J. Kennard Cheadle
Old Nat'l Bank Bldg.
Spokane 8

E. K. Murray
1012 Rust Bldg.
Tacoma 2

WEST VIRGINIA

Walton S. Shepherd
607 Security Building
Charleston 1

Robert S. Spilman
P. O. Box 273
Charleston

Robert C. Morris
Home Savings Bank Bldg.
Fairmont

Rolla D. Campbell
P. O. Box #2187
Huntington

Albert S. Abel
402 Morgan Street
Morgantown

Carl B. Galbraith
905 Riley Law Bldg.
Wheeling

C. Lee Spillers
800 Riley Law Bldg.
Wheeling

WISCONSIN

Allan W. Adams
203 Public Ser. Bldg.
Beloit

John N. Kramer
Heberlein Building
Fennimore

Hon. George F. Frantz
County Judge
Lancaster

Ralph E. Axley
1005 The Power & Light Bldg.
Madison

C. H. Crownhart, Jr.
P. O. Box 1109
Madison

Gilson G. Glasier
State Capitol
Madison 2

William Ryan
The Power & Light Bldg.
Madison

Elwin A. Andrus
1405 First Wis. Nat. Bk. Bldg.
Milwaukee

Bruno V. Bitker
208 E. Wisconsin Ave.
Milwaukee 2

Albert B. Houghton
152 W. Wisconsin Avenue
Milwaukee

Ralph M. Hoyt
928 First Wis. Nat. Bk. Bldg.
Milwaukee 2

George J. Laikin
208 E. Wisconsin Ave.
Milwaukee 2

George E. Morton
507 American State Bank Bldg.
Milwaukee 3

Martin R. Paulsen
773 North Broadway
Milwaukee 2

James D. Porter
622 North Water Street
Milwaukee 2

Benjamin Poss
710 N. Plankinton Avenue
Milwaukee 3

Frederic Sammond
1504 First Wis. Nat'l Bk. Bldg.
Milwaukee 2

George D. Spohn
110 E. Wisconsin Avenue
Milwaukee 2

Fred R. Wright
312 E. Wisconsin Ave.
Milwaukee

Edward J. Dempsey
First Nat'l Bk. Bldg.
Oshkosh

Harlan B. Rogers
Portage

WYOMING

Frank F. Jestrab
P. O. Box 2249
Casper

Charles E. Lane
P. O. Box #877
Cheyenne

HAWAII

J. G. Anthony
P. O. Box 3199
Honolulu

James P. Blaisdell
302 Castle & Cooke Bldg.
Honolulu

PUERTO RICO

Santiago Polanco—Abreu
P. O. Box 154
Isabela

Carlos J. Torres
P. O. Box 886
San Juan 4

VENEZUELA

Roy D. Jackson, Jr.
Apartado 893
Caracas